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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Derrick Julius Van,

10 Petitioner,

11 v.

12 Maricopa County Superior Court,

13 Respondent.
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No. CV-18-02570-PHX-JJT (BSB)

ORDER

15 At issue is the Report and Recommendation (“R&R”) (Doc. 29) submitted in this
16 matter by United States Magistrate Judge Deborah M. Fine, which recommends denial of
17 the Petition for Writ of Habeas Corpus Pursuant to 28 U.S. C. § 2241 (Doc. 1). Petitioner
18 timely filed Objections (Doc. 30) to the R&R, and Respondents filed a Response (Doc. 32)
19 to those Objections. For the reasons set forth below, the Court will overrule the Objections,
20 adopt in whole the R&R, and deny the Petition.

21 This Court initially denied the Petition without prejudice on the basis of *Younger*
22 abstention, as the sole ground of the Petition dealt with a state court’s decisions in an
23 ongoing state criminal proceeding. (Doc. 5 at 3.) On appellate review, the Ninth Circuit
24 correctly noted the dismissal Order gave no indication that this Court had considered the
25 impact of the Ninth Circuit’s recent decision in *Arevalo v. Hennessy*, 882 F.3d 763 (9th Cir.
26 2018), in determining to dismiss the Petition, and remanded the matter for this Court to
27 evaluate *Arevalo*’s impact on Petitioner’s claims. (Doc. 9 at 1.) On that basis this Court
28 concluded that reconsideration was appropriate. (Doc. 10.) Upon remand, the Court

1 referred the matter to Judge Fine to evaluate Petitioner's constitutional claim on its merits.
2 Upon independent consideration of Petitioner's claim, with benefit of the R&R, Objection
3 and Response, the Court concludes: 1) Judge Fine's analysis in the R&R is thorough,
4 exhaustive and correct; 2) consideration of Petitioner's claim on the merits—either because
5 one of the *Younger* factors required for abstention is not met or because one of the *Arevalo*
6 exceptions is triggered, and therefore abstention is inappropriate yields that the June 8,
7 2017 release hearings and related proceedings conducted in the State case at issue
8 comported with the applicable due process protections set forth in *United states v. Salerno*,
9 481 U.S. 739, 741 (1987); therefore 3) denial of the Petition is appropriate.

10 Judge Fine's thorough merits analysis concludes that the Arizona State
11 constitutional and statutory provisions upon which the state judge made her detention
12 decision—A.R.S. Const. Art. 2, § 22(A)(2, 3) and A.R.S. § 13-3961(d)—comport with the
13 dues process requirements as distilled by the Supreme Court in *Salerno*. The Arizona
14 Supreme Court has come to the same conclusion in *Simpson v. Miller*, 241 Ariz. 341, 349
15 (2017), and this Court finds persuasive its reasoning.

16 In his Objections, Petitioner does not address this analysis. Instead, he raises several
17 arguments premised on incorrect interpretation of the applicable law. First, Petitioner
18 appears to argue that *Arevalo* dictates a finding that the detention hearing the State court
19 conducted in this matter—and potentially all detention hearings conducted according the
20 Arizona state law provisions set forth above—are infirm. That argument misses the mark
21 wholly. *Arevalo* provides in relevant part that even if all of the *Younger* factors are met for
22 abstention, a federal court still should not abstain if one or more of a narrow list of
23 exceptions exists. The posture of this matter is beyond *Arevalo*, as this Court has already
24 concluded it would reconsider and review Petitioner's claim on its merits rather than
25 abstain. To the extent Petitioner argues that *Arevalo* dictates a finding on the merits in this
26 case, one way or the other, he is wrong, and he ignores the specific facts of his own matter
27 and how they differ from those in *Arevalo*.
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1 Second, Petitioner argues that the state judge improperly considered certain
2 evidence in reaching the detention decision as to Petitioner, including 1) a conviction
3 Petitioner had sustained in another state for making threats, which conviction has since
4 been expunged or sealed; 2) hearsay testimony that he uttered a threat to a security guard
5 that he would blow up one or multiple buildings; and 3) physical evidence and admissions
6 that tend to inculcate Petitioner in the pending state drug charges, which evidence police
7 obtained after a traffic stop for charges that subsequently were dismissed. Where, as here,
8 Petitioner raises arguments for the first time in his Objections, this Court exercises its
9 discretion not to consider them. *E.g., United States v. Howell*, 231 F.3d 615, 621 (9th Cir.
10 2000). But even if it considered these arguments, none would succeed. The Illinois
11 conviction for threats was not expunged until approximately two years after the Arizona
12 state judge rendered the detention decision. The judge properly considered a then-extant
13 conviction of record at the time she made the detention decision.

14 Next, the applicable state rules, as well as their federal counterparts, allow for
15 hearsay evidence at detention hearings. Finally, dismissal of a state charge does not equate
16 to suppression of any evidence gathered in the associated stop for that charge. Had a court
17 suppressed the evidence from the stop or dismissed the traffic charges for an express Fourth
18 Amendment violation or related bad faith behavior by the officers involved, then
19 Petitioner’s “fruit of the poisonous tree” argument might have merit. But Petitioner has
20 made no such showing or even argued the stop itself was infirm. Petitioner merely provided
21 a Phoenix Municipal Court document entitled “Notice of Dismissal” (Doc. 30 Exh. 9),
22 which provides no indication of anything other than that the red light violation and driving
23 with license suspended charges were dismissed. For that and the several other reasons
24 correctly set forth in Respondents’ Response to Objections (Doc. 32 at 6-8), which the
25 Court will not reiterate here, Petitioner’s evidentiary arguments would fail, were the Court
26 to exercise discretion to consider them.

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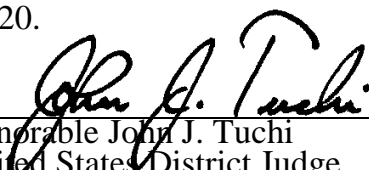
Therefore,

IT IS ORDERED overruling Petitioner’s Objections (Doc. 30) to the R&R (Doc. 29) and adopting the R&R in whole.

IT IS FURTHER ORDERED denying the Petition for Writ of Habeas Corpus (Doc. 1).

IT IS FURTHER ORDERED denying a Certificate of Appealability to Petitioner. He has not made a substantial showing of the denial of a constitutional right. The Court finds that jurists of reason would not find its assessment of Petitioner’s constitutional claims to be debatable or wrong, as that standard is set forth in *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Dated this 27th day of January, 2020.



Honorable John J. Tuchi
United States District Judge